

REMARKS

Claims 1-14 are currently being cancelled in lieu of new claims 15-32 to fix an unintentional typographical errors in the claims previously submitted on September 10, 2004, and to conform the claims to U.S. practice.

Applicant asserts the claim scope of claims 15-32 is exactly the same as previously pending claims 1-14. Accordingly, Applicant asserts that no claim scope has been relinquished by the current amendment. Additionally, the amendment does not introduce new matter within the meaning of 35 U.S.C. §132.

1. Objection to Specification

The Office Action states,

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: "Soft polyolefin composition with improved flow"

RESPONSE

Applicant thanks the Examiner for the above suggestion regarding the title. Accordingly, Applicant has submitted a substitute specification changing the title which conforms to 37 C.F.R. 1.125. A marked-up copy of the specification is submitted herein as ATTACHMENT A, and a clean copy of the specification is submitted herein as ATTACHMENT B.

The amendments to the specification presented herein do not introduce new matter within the meaning of 35 U.S.C. §132. Accordingly, the Examiner is respectfully requested to enter the substitute specification.

2. Rejection of Claims 1-14 Under 35 U.S.C. §102(f)

The Office Action states,

Claims 1-14 are rejected under 35 U.S.C. 102(f) because inventive entity of two conflicting inventions (Applicant and U.S. Patent No. 6,743,864) do not share common inventor and claimed subject matter of both inventions are substantially same and not patentably distinct.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned inventions, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102 (f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

RESPONSE

Claims 1 - 14 have been cancelled rendering the above rejection moot.

Notwithstanding, for a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claims is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Applicant respectfully believes U.S. patent 6,743,864 (referred to herein as "Glogovsky, et al.") fails to teach, suggest, or disclose, "A polyolefin composition comprising:

(A) from 15 to 40% by weight of a crystalline propylene copolymer comprising at least 90% by weight of propylene and at least one alpha-olefin of formula $H_2C=CHR^1$, where R^1 is H or a C_{2-8} linear or branched alkyl, the crystalline propylene copolymer comprising a solubility in xylene at room temperature lower than 15% by weight;

(B) from 60 to 85% by weight of an elastomeric fraction comprising:

(1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room

temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g; and

(2) an ethylene copolymer comprising 15 to 40% by weight of at least one alpha-olefin of formula $H_2C=CHR^2$, where R^2 is a C_{2-8} linear or branched alkyl, the ethylene copolymer comprising a solubility in xylene at room temperature greater than 35% by weight, and a xylene soluble fraction of the ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g;

wherein a weight ratio of B(1) to B(2) ranges from 1:5 to 5:1."

Additionally, Applicant believes Glogovsky, et al. fails to teach, suggest, or disclose, "A process for preparing a polyolefin composition comprising:

(A) from 15 to 40% by weight of a crystalline propylene copolymer comprising at least 90% by weight of propylene and at least one alpha-olefin of formula $H_2C=CHR^1$, where R^1 is H or a C_{2-8} linear or branched alkyl, the crystalline propylene copolymer comprising a solubility in xylene at room temperature lower than 15% by weight;

(B) from 60 to 85% by weight of an elastomeric fraction comprising:

(1) a propylene and ethylene copolymer comprising from 20 to

35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g; and

(2) an ethylene copolymer comprising 15 to 40% by weight of at least one alpha-olefin of formula $H_2C=CHR^2$, where R^2 is a C_{2-8} linear or branched alkyl, the ethylene copolymer comprising a solubility in xylene at room temperature greater than 35% by weight, and a xylene soluble fraction of the ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g; wherein a weight ratio of B(1) to B(2) ranges from 1:5 to 5:1, and the process comprises at least three sequential polymerization stages with each subsequent polymerization stage being conducted in presence of a polymeric material formed in a immediately preceding polymerization reaction, wherein the crystalline propylene copolymer is prepared in at least one first stage and the elastomer fraction is prepared in at least two sequential stages, wherein the at least three sequential polymerization stages are carried out in presence of a catalyst comprising a trialkylaluminum compound and a solid catalyst component comprising a halide or halogen-alcoholate of Ti and an electron-donor compound supported on anhydrous magnesium chloride, the solid catalyst component comprising a surface area

(measured by BET) of less than 200 m²/g, and a porosity (measured by BET) greater than 0.2 ml/g."

Moreover, Applicant believes Glogovsky, et al. fails to teach, suggest, or disclose, "A film, sheet, or mixture thereof comprising a polyolefin composition comprising:

(A) from 15 to 40% by weight of a crystalline propylene copolymer comprising at least 90% by weight of propylene and at least one alpha-olefin of formula H₂C=CHR¹, where R¹ is H or a C₂₋₈ linear or branched alkyl, the crystalline propylene copolymer comprising a solubility in xylene at room temperature lower than 15% by weight;

(B) from 60 to 85% by weight of an elastomeric fraction comprising:

(1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g; and

(2) an ethylene copolymer comprising 15 to 40% by weight of at least one alpha-olefin of formula H₂C=CHR², where R² is a C₂₋₈ linear or branched alkyl, the ethylene copolymer comprising a solubility in xylene at room temperature greater than 35% by weight, and a xylene soluble fraction of

the ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g; wherein a weight ratio of B(1) to B(2) ranges from 1:5 to 5:1."

Yet even more so, Applicant believes Glogovsky, et al. fails to teach, suggest, or disclose, "A cast film comprising a polyolefin composition comprising:

- (A) from 15 to 40% by weight of a crystalline propylene copolymer comprising at least 90% by weight of propylene and at least one alpha-olefin of formula $H_2C=CHR^1$, where R^1 is H or a C_{2-8} linear or branched alkyl, the crystalline propylene copolymer comprising a solubility in xylene at room temperature lower than 15% by weight;
- (B) from 60 to 85% by weight of an elastomeric fraction comprising:

- (1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g; and

- (2) an ethylene copolymer comprising 15 to 40% by weight of at least one alpha-olefin of formula $H_2C=CHR^2$, where R^2 is a C_{2-8} linear or branched alkyl, the ethylene copolymer comprising a solubility in xylene at room temperature

greater than 35% by weight, and a xylene soluble fraction of the ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g; wherein a weight ratio of B(1) to B(2) ranges from 1:5 to 5:1."

In particular, Applicant respectfully believes that Glogovsky, et al. fails to teach, suggest, or disclose a polyolefin composition comprising, "(B) from 60 to 85% by weight of an elastomeric fraction comprising: (1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g."

In fact, Glogovsky, et al. discloses a completely different polyolefin composition in which the disclosed elastomeric fraction (i.e., component (B)) comprises, "(1) a copolymer of propylene with ethylene containing about 20 to about 35% by weight ethylene, and having solubility in xylene at room temperature greater than about 70% by weight, the intrinsic viscosity of the xylene soluble fraction being higher than about 3.0 dl/g up to about 6.0 dl/g" with the intrinsic viscosity of component (B)(1) being preferably from about 3.5 to 5.0 dl/g, and even more preferably from about 4.0 to about 4.5 dl/g. See col. 4, line 62 - col. 5, line 3.

Accordingly, the (B)(1) component in Glogovsky, et al. comprises a much higher intrinsic viscosity range than what is

currently claimed by Applicant.

Moreover, the currently claimed subject matter and the subject matter contained in Glogovsky, et al. are commonly owned, and Applicant was subject to an obligation of assignment to the owner of Glogovsky, et al. at the time the claimed subject matter was made. Applicant has included herein as ATTACHMENT D, (1) a copy of the Recordation of Assignment for the currently pending application, and (2) a copy of the assignee of record for Glogovsky, et al. from the U.S. Assignment database.

In light of the above, claims 15 - 32 are therefore believed to be patentable over Glogovsky, et al. Accordingly, reconsideration and withdrawal of the rejection is requested.

3. Double Patenting Rejection

The Office Action states,

Claims 1 - 14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of Glogovsky (U.S. Patent No. 6,743,864).

Although the conflicting claims are not identical, they are not patentably distinct from each other because Applicant claimed essentially same polyolefin composition and same method of polymerization for producing this composition and even same application field - films and sheets produced from this composition by extrusion.

Composition claimed by Applicant is obvious modification of composition disclosed by Glogovsky, et al. (U.S. 6,743,864): Component A in Applicant's Claim 1 is identical to Component A disclosed by Glogovsky and used in same range in composition; Component B(1) is identical in composition and ethylene content, fully encompasses criteria of solubility in xylene (greater than 45% per Applicant and more than 70% by Glogovsky) and may have same

viscosity of soluble fraction; Component B(2) is identical in composition, overlap in solubility(Applicant claimed solubility greater than 35% follow disclosed by Glogovsky preferable range greater than about 30% (see column 5, line 10 - 15)); ratios between B(1) and B(2) is also identical.

RESPONSE

The arguments regarding Glogovsky, et al. are discussed *supra* and are incorporated herein by reference in their entirety.

Accordingly, claims 15 - 32 are therefore believed to be patentably distinct over Glogovsky, et al. Reconsideration and withdrawal of the rejection is kindly requested.

CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw the objection and rejections, and allow all pending claims 15 - 32. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned practitioner if any questions or comments arise.

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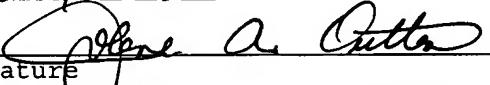
Respectfully submitted,

By: 

Jarrod N. Raphael
Registration No. 55,566
Customer No. 34872

Date: July 28, 2006
Basell USA Inc.
912 Appleton Road
Elkton, MD 21921
Telephone No.: 410-996-1750
Fax No.: 410-996-1560

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